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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues
12 Against:

Case No. 4290

STATEMENT OF ISSUES

13 **VA EUNG**

14 **Pharmacy Technician Registration**
15 **Applicant**

16 Respondent.

17 Complainant alleges:

18 PARTIES

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 18, 2011, the Board of Pharmacy, Department of Consumer Affairs
22 received an application for a Pharmacy Technician Registration from Va Eung (Respondent). On
23 or about May 25, 2011, Va Eung certified under penalty of perjury to the truthfulness of all
24 statements, answers, and representations in the application. The Board denied the application on
25 February 3, 2012.

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1 oneself, to a person holding a license under this chapter, or to any other person or to the public, or
2 to the extent that the use impairs the ability of the person to conduct with safety to the public the
3 practice authorized by the license.

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5 "(j) The violation of any of the statutes of this state, or any other state, or of the United
6 States regulating controlled substances and dangerous drugs.

7 "(k) The conviction of more than one misdemeanor or any felony involving the use,
8 consumption, or self administration of any dangerous drug or alcoholic beverage, or any
9 combination of those substances.

10 "(l) The conviction of a crime substantially related to the qualifications, functions, and
11 duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13
12 (commencing with Section 801) of Title 21 of the United States Code regulating controlled
13 substances or of a violation of the statutes of this state regulating controlled substances or
14 dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the
15 record of conviction shall be conclusive evidence only of the fact that the conviction occurred.
16 The board may inquire into the circumstances surrounding the commission of the crime, in order
17 to fix the degree of discipline or, in the case of a conviction not involving controlled substances
18 or dangerous drugs, to determine if the conviction is of an offense substantially related to the
19 qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or
20 a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning
21 of this provision. The board may take action when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal or when an order granting probation is made
23 suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of
24 the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not
25 guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or
26 indictment.

27 "(p) Actions or conduct that would have warranted denial of a license.

1 6. Section 480 of the Code states:

2 "(a) A board may deny a license regulated by this code on the grounds that the applicant has
3 one of the following:

4 "(1) Been convicted of a crime. A conviction within the meaning of this section means a
5 plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a
6 board is permitted to take following the establishment of a conviction may be taken when the
7 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when
8 an order granting probation is made suspending the imposition of sentence, irrespective of a
9 subsequent order under the provisions of Section 1203.4 of the Penal Code.

10 "(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially
11 benefit himself or herself or another, or substantially injure another.

12 "(3) (A) Done any act that if done by a licentiate of the business or profession in question,
13 would be grounds for suspension or revocation of license.

14 "(B) The board may deny a license pursuant to this subdivision only if the crime or act is
15 substantially related to the qualifications, functions, or duties of the business or profession for
16 which application is made.

17 "(b) Notwithstanding any other provision of this code, no person shall be denied a license
18 solely on the basis that he or she has been convicted of a felony if he or she has obtained a
19 certificate of rehabilitation under Chapter 3.5 (commencing with Section 4852.01) of Title 6 of
20 Part 3 of the Penal Code or that he or she has been convicted of a misdemeanor if he or she has
21 met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate
22 the rehabilitation of a person when considering the denial of a license under subdivision (a) of
23 Section 482.

24 "(c) A board may deny a license regulated by this code on the ground that the applicant
25 knowingly made a false statement of fact required to be revealed in the application for the
26 license."

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1 FIRST CAUSE FOR DENIAL OF APPLICATION

2 (Unprofessional Conduct - Conviction of Substantially Related Crimes)

3 7. Respondent's application for licensure as a pharmacy technician is subject to denial
4 under Code sections 4300, as defined in Code sections 4301 subdivision (l) and 480 subdivision
5 (a)(1) in that he was convicted of the following crimes that are substantially related to the
6 qualifications, functions, and duties of a pharmacy technician:

7 A. On or about December 28, 2009, in San Francisco County Superior Court, Case No.
8 02375200, entitled *People v. Va Eung*, Respondent was convicted by his plea of nolo contendere
9 of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of alcohol)
10 and 23152, subdivision (b) (driving with a .08%, or higher blood alcohol content).

11 The circumstances of the crime are that on or about July 5, 2008, Respondent drove a
12 vehicle while having a blood alcohol content of .08%, or higher. Respondent was sentenced to
13 120 days in County Jail; five years probation; required to pay fines, fees, restitution, and
14 assessments; and required to complete the Multiple Offender's Drunk Driving Program.

15 B. On or about December 28, 2009, in San Francisco County Superior Court, Case No.
16 02379195, entitled *People v. Va Eung*, Respondent was convicted by his plea of nolo contendere
17 of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of
18 alcohol); 23152, subdivision (b) (driving with a .08%, or higher blood alcohol content); and
19 22350 (unsafe speed).

20 The circumstances of the crime are that on or about August 1, 2008, Respondent drove a
21 vehicle over the speed limit while having a blood alcohol content of .08%, or higher. Respondent
22 was sentenced to five years probation; two days in County Jail; required to pay fines,
23 assessments; and required to complete the Multiple Offender's Drunk Driving Program.

24 C. On or about December 28, 2009, in San Francisco County Superior Court, Case No.
25 02399195, entitled *People v. Va Eung*, Respondent was convicted by his plea of nolo contendere
26 of violating Vehicle Code sections 23152, subdivision (a) (driving under the influence of
27 alcohol); 23152, subdivision (b) (driving with a .08%, or higher blood alcohol content); and
28 14601.5, subdivision (a) (driving with suspended/revoked license).

1 The circumstances of the crime are that on or about December 20, 2008, Respondent rear-
2 ended a vehicle and a California Highway Patrol Officer who responded to the accident scene.
3 Respondent displayed objective symptoms of intoxication and failed the field sobriety tests.
4 Respondent had a blood alcohol content of .15%. Respondent was sentenced to five years
5 probation; 120 days in County Jail; required to pay fines, assessments, and restitution; and
6 required to complete the Multiple Offender's Drunk Driving Program.

7 SECOND CAUSE FOR DENIAL OF APPLICATION

8 (Unprofessional Conduct - Convictions Involving Alcohol)

9 8. Respondent's application is subject to denial under Code section 4300, as defined in
10 section 4301, subdivision (k), and 480, subdivision (a)(1) in that he was convicted of more than
11 one misdemeanor involving the consumption of alcohol, as set forth in paragraph 6, above.

12 THIRD CAUSE FOR DENIAL OF APPLICATION

13 (Unprofessional Conduct)

14 9. Respondent's application is subject to denial under Code section 4300, in that
15 Respondent engaged in "unprofessional conduct" not becoming the profession of pharmacy, as
16 described in paragraph 6, above.

17 FOURTH CAUSE FOR DENIAL OF APPLICATION

18 (Unprofessional Conduct - Act Involving Dishonesty)

19 10. Respondent was notified by letter dated February 3, 2012, that his Application for
20 Registration as a Pharmacy Technician was denied because of his criminal convictions.
21 Respondent falsely omitted and/or neglected to disclose two of his criminal convictions in answer
22 to question six, regarding disclosure of convictions.

23 11. Respondent's application is subject to denial under sections 4300, as defined in
24 section 4301, subdivision (g) and 480, subdivisions (a)(2) and (c) on the grounds of knowingly
25 making a false statement on her Application for Registration as a Pharmacy Technician as set
26 forth in paragraph 9, above, in that pursuant to a request in the application to disclose each
27 conviction, Respondent falsely omitted two of his previous convictions.

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FIFTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Conduct Warranting Denial of Application)

12. Respondent's application is subject to denial under Code section 4301, subdivision (p), in that Respondent engaged in conduct that would have warranted denial of a license as described in paragraph 6, above.

SIXTH CAUSE FOR DENIAL OF APPLICATION

(Unprofessional Conduct - Use of Alcohol)

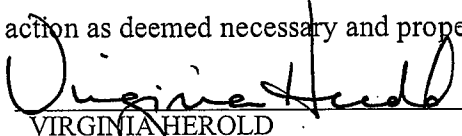
13. Respondent's application is subject to denial under Code section 4301, subdivision (h), in that Respondent used alcohol to the extent or in a manner as to be dangerous or injurious to himself or to the public, as described in paragraph 6, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Board of Pharmacy issue a decision:

1. Denying the application of Va Eung for a Pharmacy Technician Registration;
2. Taking such other and further action as deemed necessary and proper.

DATED: 8/14/12



VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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